

REMARKS

Claims 15 and 16 are added, and therefore claims 8 to 16 are pending in the present application.

In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is therefore respectfully requested.

Claim 8 was rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,097,314 ("Desens").

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 8, as presented, is directed to a parking aid for a vehicle, including *a measuring unit configured to detect spatial dimensions of parking spaces as the vehicle travels past the parking spaces*. The parking aid further includes *a memory unit to store the spatial dimensions of multiple parking spaces detected by the measuring unit*. Support for the added features may be found, for example, at page 4, lines 1 to 15 of the Specification.

The Office Action, at paragraph 3, conclusorily asserts that the Desens reference discloses the memory unit of claim 8. The cited portion of the Desens reference,

however, merely refers to “stored data concerning the previously measured parking space”. The Desens reference refers to stored data concerning but one single parking space. In the event that the parking space is not suitable, the data concerning that parking space is disregarded.

In contrast, claim 8, as presented, includes a memory unit to store the spatial dimensions of multiple parking spaces detected by the measuring unit. As described in the Specification (for example, at page 1, lines 20 to 26), storing the spatial dimensions of multiple parking spaces may assist a driver in determining the sufficiency of a parking space, through comparison of the stored parking space dimensions. Because the Desens reference does not identically disclose (or even suggest) the memory unit to store the spatial dimensions of multiple parking spaces detected by the measuring unit, the Desens reference does not identically disclose (or suggest) all of the features of claim 8, as presented.

Accordingly, claim 8, as presented, is allowable, as are its dependent claims. Withdrawal of the rejections is therefore respectfully requested.

Claims 9 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Desens reference further in view of U.S. Patent No. 6,265,968 (“Betzitza”).

Claims 9 and 14, as presented, depend from claim 8 and therefore incorporate all of the features of claim 8. Claims 9 and 14 are allowable for at least the same reasons as claim 8, since the Betzitza reference does not cure the critical deficiencies of the primary reference. The Betzitza reference, like the Desens reference, is directed to information concerning but a single parking space. Therefore, the combination of the Desens and Betzitza references does not disclose, or even suggest, all of the features of independent claim 8, or dependent claim 14.

Withdrawal of the present rejection is therefore respectfully requested.

Claims 10, 11 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Desens reference further in view of U.S. Patent Application Publication No. 2002/0161520 (“Dutta”).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and

not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 10, 11 and 13 depend from claim 8, as presented, and are therefore allowable for at least the same reasons as claim 8, since the Dutta reference does not cure the critical deficiencies of the primary reference. The Dutta reference merely refers to parking area closure schedules and the availability of parking, and does not include a memory unit to store spatial dimensions, detected by a measuring unit, of multiple parking spaces, as provided for in the context of the claimed subject matter. Therefore, the combination of the Desens and Dutta references does not disclose or even suggest all of the features of independent claim 8, as presented.

Accordingly, dependent claims 10, 11 and 13 are allowable.

As further regards claim 11, the Dutta reference does not disclose, or even suggest, the feature of deleting memory data after a predefinable distance of the vehicle to the parking spaces. The Dutta reference only refers to updating parking information when the vehicle leaves a metropolitan area. The device of the Dutta reference predefines regions or areas, within which the parking spaces may be located at any distance from the border of the region. In contrast, the device of claim 11 features a predefinable distance from parking spaces. Claim 11 is therefore also allowable for this further reason.

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Desens reference.

Claim 12 depends from claim 8, as presented, and is therefore allowable for at least the same reasons as claim 8, as presented.

As further regards claim 12, the Desens reference does not disclose, or even suggest, the feature of activating the parking aid when the vehicle speed falls below a predefined level, and deactivating the parking aid when a predefined speed is exceeded. The Office Action conclusorily asserts that the display of current operating conditions of the Desens reference discloses this feature. In fact, however, a display of current conditions does not disclose, or even suggest, the feature of activating and deactivating the parking aid based on the speed of the vehicle. Claim 12 is therefore also allowable for this further reason.

Withdrawal of the present rejection is therefore respectfully requested.

Claim 14 was rejected under 35 U.S.C. § 112, first paragraph, as a single means claim and was asserted to be subject to an undue breadth rejection.

As presented, claim 14 has been corrected to depend from claim 8, as presented, and therefore includes all of the features of claim 8, as presented. Withdrawal of the present rejection is therefore respectfully requested.

New claims 15 and 16 do not add any new matter and are supported by the present application. Claims 15 and 16 depend from claim 8, as presented, and are therefore allowable at least for the same reasons.

Accordingly, claims 8 to 16 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully Submitted,

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